

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PARAMOUNT PICTURES
CORPORATION,

Plaintiff,

v.

JOHNSON BROADCASTING INC,

Defendant.

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CIVIL ACTION NO. H-04-03488

MEMORANDUM AND ORDER

Pending before the Court are Defendant Johnson Broadcasting Inc.'s ("Johnson") Objection to and Motion to Strike Declaration of Keith R. Ugone, Ph.D. and Expert Report (Docket # 60) and Motion to Exclude the Testimony of Keith R. Ugone, Ph.D. (Docket # 67). For the following reasons, Johnson's motions are **DENIED**.

Johnson first asserts that Dr. Ugone's testimony is conclusory and lacks factual support. A review of Dr. Ugone's report, however, shows that this is not the case. Rather, the report explains in detail the facts and methodology on which Dr. Ugone has based his opinions.

Johnson further attacks Dr. Ugone's testimony as unreliable, contending that Dr. Ugone made no effort to determine whether the programs he classified as "available substitutes" were actually available to Johnson, or whether they were close or reasonable substitutes for the *Judge Judy* and *Judge Joe Brown* programs. Johnson contends that the available substitutes identified by Dr. Ugone were not available to Johnson, and that they were not reasonable substitutes for *Judge Judy* and *Judge Joe Brown*, when evaluated by ratings or by number of episodes. These contentions, while they may be correct, do not render Dr. Ugone's testimony inadmissible. Instead, Johnson's appropriate course of action is to attack any flaws in Dr. Ugone's testimony through cross-examination, or through the testimony of other witnesses.

Johnson has not shown that Dr. Ugone's report or testimony is inadmissible, or that it should be excluded from either the Court's consideration with respect to any remaining motions, or from the jury's consideration at trial. Johnson's motions are therefore **DENIED**, and Dr. Ugone's testimony may be introduced at trial.

IT IS SO ORDERED.

SIGNED this 22nd day of May, 2006.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT